

**SUBMISSION TO THE LAW SOCIETY OF UPPER CANADA REGARDING  
PROPOSED STANDARDS FOR SPECIALIST CERTIFICATION IN HEALTH LAW**

**Submitted by: Health Law Section - Ontario Bar Association**  
**Dated: September 7, 2005**



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## HEALTH LAW SECTION

Ontario Bar Association | Association du Barreau de l'Ontario

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### SECTIONS

Aboriginal Law  
Administrative Law  
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Canadian Corporate Counsel  
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Privacy Law  
Public Sector Lawyers  
Real Property  
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Worker's Compensation  
Young Lawyers

September 7, 2005

Ms. Kelly Reeves  
Coordinator, Certified Specialist Program  
The Law Society of Upper Canada  
Osgoode Hall 130 Queen Street West  
Toronto, ON M5H 2N6

Dear Ms Reeves:

Thank you very much for providing the Health Law Section of the Ontario Bar Association ("HLS") with an opportunity to provide our input on the proposed standards for certification for the specialty of Health Law ("Proposed Standards"). As you know, our Section members are very supportive of the designation of Health Law as a Certified Specialty and are delighted that the Law Society and Working Group have been working so diligently to bring this to fruition. In particular, our Section commends the Law Society and the Working Group for their incredibly hard work in developing the Proposed Standards in such a short time period, and appreciates what a difficult task this is.

Our recommendations for change are primarily to ensure that the Proposed Standards are reflective of the practice of Health Law and that counsel who truly specializes in the practice of health law will have the opportunity to be designated as Specialists, if they meet the criteria.

We appreciate the inclusion of Substantial Contribution, Development of Health Law, as a route to meet certification requirements and for recognizing work done on the executive of any organization related to Health Law. We believe that this work is a significant service to the profession and to the public, and provides the opportunity for substantial professional development and personal growth on the part of those of us who undertake this work.

To provide you with some background on the composition of the HLS, as at June, 2005 the HLS had 343 members, practicing in all areas of health law, including litigation, corporate commercial, and advocacy before tribunals, risk management and regulatory compliance. Our members practice in

diverse settings, including: private practice, in-house counsel, pharmaceutical companies, health care organizations, government, health professional colleges and associations, and legal aid clinics. Hence we have had the benefit of a variety of perspectives from a number of different practitioners in developing our Submission.

We have endeavored to have an open consultation process in order to develop this Submission, as follows:

- the Chair of the HLS Executive circulated the Proposed Standards to all members of the HLS and invited written comments;
- the Executive of the HLS struck a subcommittee to review the Proposed Standards and develop a draft Submission for consideration by the HLS Executive;
- input was then sought from all 25 members of the HLS Executive; and
- the Submission was approved by the Executive of the HLS on September 6, 2005.

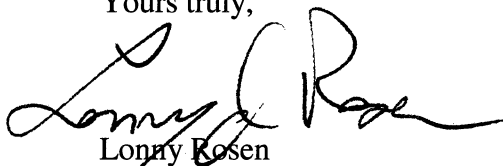
Our Submission is divided into four parts, with substantive comments in Parts I to III and a Comparative Analysis of the Certified Specialties in Part IV.

Part I	Executive Summary of Major Recommendations and Responses to the Questions Posed by the Law Society
Part II	Rationale for Recommendations
Part III	Proposed Standards, with Suggested Amendments Highlighted and incorporating all of our Recommendations
Part IV	Comparative Analysis of the Certified Specialties

We would be delighted to meet with you or the Working Group to clarify or elaborate upon any of the matters raised in this Submission. We have attached a clean copy of our amended Proposed Standards, in case this is of assistance to the Working Group. We would also be pleased to provide you with an electronic copy of our Submission.

Thank you again for the opportunity to provide input.

Yours truly,



Lonny Rosen  
Chair, Health Law Section

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## **PART I EXECUTIVE SUMMARY**

### **(a) INTRODUCTION**

There are three parts to this Submission. Part I is an Executive Summary of our Recommendations, and Responses to the Questions Raised by the Law Society in seeking our comments on the Proposed Standards. Part II sets out the rationale for our Recommendations. Part III is our specific proposed changes to the text of the Proposed Standards which incorporates all the Recommendations in this Submission. Part IV is a Comparative Analysis of all the Certified Specialties currently approved by the Law Society.

### **(b) RECOMMENDATIONS**

#### ***1. One Designation - “Certified Specialist: Health Law”***

There should only be one designation for a certified specialist in health law, being “Certified Specialist: Health Law”.

#### ***2. Broader Standards for Health Law Certification***

All applicants for certification as a health law specialist should be required to qualify in any two out of four categories. The four categories should have the following names: Category 1 to be “Health Law: Advocacy”, Category 2 to be “Health Law: Solicitor’s Work”, Category 3 to be “Health Law: Opinions and Advice” and Category 4 to be “Health Law: Substantial Contribution, Development of Health Law”.

#### ***3. Broader Standards for Proposed Category 3 – “Health Law: Opinions and Advice”***

Proposed Category 3- “Health Law: Opinions and Advice” should include the breadth of advice and opinions regarding issues pertaining to health professionals and health care facilities, including: insurance, environmental law, information technology and employment issues specific to health professionals.

#### ***4. Broader Standards for Proposed Category 2 – “Health Law: Solicitor’s Work”***

Proposed Category 2 – “Health Law: Solicitor’s Work” should include other areas of work such as the development and review of policies and procedures in respect of health professionals and health care facilities.

## ***5. Amend Requirement for Number of Legal Opinions***

Requirements in Proposed Category 2 should be amended to be “200 substantial oral or written legal opinions or 1,500 hours devoted to preparing and/or delivering oral or written legal opinions”.

## ***6. Broader Advocacy Standards***

The criteria for assessing Proposed Category 1 – “Health Law: Advocacy” should be broadened to include all forms of written and oral health law advocacy, including: written submissions for administrative tribunals and health professional college committees and panel proceedings; written and oral advocacy on behalf of health care entities and health professionals; written and oral advocacy in respect of health care issues and proposed legislation; and preparation for, and appearances at, all boards, tribunals and other entities that deal with health law matters.

## ***7. Advocacy Expertise to be Within Health Law***

The Proposed Standards for Proposed Category 1 – “Health Law: Advocacy” should be focused on advocacy skills within health law, rather than general litigation skills.

## ***8. Amend Requirement for 100 Days of Appearances***

The “100 days of appearances before courts and/or tribunals” criterion in paragraph 11 of Proposed Category 1 “Health Law: Advocacy” should be amended to be:

- (a) 100 days of appearances before courts and/or tribunals, commissions and legislative bodies (including attending, mediations, pre-trial and pre-hearing conferences, settlement conferences and motions) (“Appearances”); or
- (b) 50 days of Appearances and preparation of 30 pieces of substantive written advocacy (including complaint responses and submissions to courts, boards, tribunals, commissions and legislative committees).

## ***9. Equivalency for Prior Experience***

Consideration should be given for offering credit/equivalency (in terms of years of practice) if an individual has practiced in the field of the provision of health care, where the particular position involved specific experience in dealing with the legal/health framework.

### ***10. Delete Practice of Discreet Inquiries***

The practice of discreet inquiries (paragraph 23 of the Proposed Standards) should be deleted to increase transparency and respect confidentiality of applicants.

### ***11. Increase Transparency of Certification Process***

Paragraph 21 of the Proposed Standards should be deleted, and all relevant criteria for assessment in the health law specialty should be specified, in order to increase the transparency of the certification process.

### ***12. Differential Fees to Increase Accessibility of Specialist Designation***

There should be differential fee categories for both application and annual fees for the health law specialist designation to increase accessibility of the health law specialist designation.

### ***13. Flexibility re References from Employers and Co-Workers***

References should be permitted from employers and co-workers of applicants who are in-house counsel, work within government or who otherwise may have difficulty in obtaining four current referees who are familiar with their work. The employers or co-workers should be persons other than partners or associates.

### ***14. Clarify all Eligibility Requirements and Composition of Health Law Specialist Committee to Increase Transparency***

The Law Society criteria for certification (from its bylaws) should be reproduced in the application materials, and the composition of the Health Law Specialty Committee (positions, not names) should be specified in order to increase the transparency of the certification process.

## **(c) RESPONSES TO QUESTIONS POSED BY THE LAW SOCIETY**

### ***1. Appropriateness of the definition of the specialty***

In our view, the definition of the health law specialty is appropriate.

### ***2. Appropriateness of the 50% and 75% practice concentration requirements***

In our view, the 50% requirement is appropriate, subject to our specific recommendations in this Submission. As we are recommending that there only be one specialist designation, we have not considered the proposed 75% practice concentration.

### ***3. Clarity and understandability of the experience requirements***

Many of the requirements are clear and understandable. We have addressed those that we feel need clarification or expansion in this Submission.

### ***4. Transparency of the certification process***

Please see Recommendations 10, 11 and 14 above.

### ***5. Impact of the costs of certification on accessibility***

Please see Recommendation 12 above.

### ***6. Accessibility for members practicing in our geographical area***

At this time, we are not aware of any accessibility concerns based on geography with respect to a Health Law Specialty.

It is a reality of practicing law, that there may not be an opportunity to have 50% of a lawyer's caseload be in a particular specialty in all parts of the province. However, given the electronic environment and advanced technology, work can be done for clients from all parts of Ontario, even if the counsel resides elsewhere.

## PART II RATIONALE FOR RECOMMENDATIONS

### *1. One Designation - “Certified Specialist: Health Law”*

#### **There should only be one designation for a certified specialist in health law, being “Certified Specialist: Health Law.”**

In our view, the proposed subspecialties of “Health Law: Advocacy” and “Health Law: General Counsel” are misleading to the public and the profession. The term “General Counsel” has a specific industry meaning and the terms “Advocacy” and “General Counsel” do not adequately describe the breadth (or reflect the limitations) of a lawyer’s expertise. It is unlikely that a member of the public will understand what is meant by the term “Advocacy”. In our view, the subspecialties of “Health Law: Advocacy” and “Health Law: General Counsel” are unnecessary for several reasons set out below. The comparative analysis of the 13 certified specialties (Part IV) is helpful in this regard and we highlight the following:

First, to subdivide a small specialty like health law serves no useful purpose. We note that only two out of the 13 current specialties have sub-specialties. (i.e., Intellectual Property and Immigration). These subspecialties are defined according to a subspecialty of a substantive area of law. In addition, no other specialty has different public designations or titles differentiating between “Advocates” and “General Counsel”.

Second, those specialty areas with larger numbers (as evidenced by their OBA membership) do not have sub-specialties. For example, Civil Litigation which has 1424 members and Insolvency which has 536 members do not have sub-specialties.

Third, we note that for most of the specialists, there is more than one route to specialization through the application process, yet only one designation is available. Environmental Law is an area which has had specialist certification for some time and which, like the proposed Health Law specialization, provides for different routes for achieving Specialist Certification Status (i.e., litigation, transactional, opinions/advice and substantial contribution). These four descriptors are similar to those that the HLS is proposing for Health Law. However, environmental lawyers who are certified as specialists are not required to specify the area of Environmental Law in which they were certified as specialists, and this is appropriate, as there is likely to be substantial overlap in the areas of sub-specialization. Further, the Environmental Law model recognizes that there are a number of combinations in which a lawyer may qualify as a specialist in Environmental law, as all applicants must satisfy two out of four categories.

Fourth, the proposed Health Law designations are misleading in that the term “General Counsel” has a specific meaning in industry unrelated to the description set out in paragraph 9 of the Proposed Standards. The term “General Counsel” typically refers to a

lawyer who works in-house, advising a company on all legal matters, and its use in this context may be misleading with respect to a solicitor who works in private practice. “Advocacy” is not a well-understood term by members of the public, and it is capable of a variety of meanings.

Fifth, we understand the critical role of the Law Society and the Certified Specialist Program in ensuring “protection of the public”. Medical malpractice litigation is a forum in which individuals who may have suffered harm as a result of a medical procedure would have to litigate against professionals and institutions represented by outstanding counsel and with enormous resources behind them. Accordingly, great expertise is required to effectively prosecute a malpractice action. We understand that recognition of this fact is what led the working group to subdivide the Health Law specialty, presumably to protect members of the public from being misled as to the expertise in medical malpractice litigation of a lawyer certified as a specialist in Health Law who may have little or no experience in prosecuting or defending medical malpractice cases as he or she may have attained such designation through the current routes related to General Counsel. It is submitted, however, that individuals who have met the requirements for certification in Health Law but who have no experience in medical malpractice litigation, are unlikely to use this designation to attract clients for medical malpractice actions when they are not competent to take on such cases. Our Rules of Professional Conduct prohibit this.

Sixth, members of the public may not appreciate that a lawyer designated as a specialist in “Health Law: General Counsel” is *not* experienced in malpractice matters (which the public may construe as part of a “general” Health Law practice), while a specialist in Health Law: Advocacy (a term with which many members of the public may not be familiar) may have such expertise. Additionally, the specialist in “Health Law: Advocacy” may practice exclusively before administrative tribunals and may have little or no expertise in medical malpractice matters and therefore the purpose for which the designation is configured is not being met.

Finally, it is our submission, that the proposed sub-specialties of “Advocacy” and “General Counsel” do not reflect the reality that many lawyers often blend their skills to assist their clients in resolving a legal problem. As an example, a lawyer who acts as Registrar of a health profession regulatory college will often blend his/her expertise in conducting legal proceedings, as well as expertise often known to rest with the traditional “corporate governance” lawyer.

In conclusion, for all of the reasons stated above, we recommend that the health law certification process avoid a bifurcation of the health law designation based on any distinction between “advocates” versus “general counsel”. We do not suggest that the terms proposed by the Working Group could be improved upon, but rather that including such information in the health law designation itself is misleading to both the profession and the public.

## ***2. Broader Standards for Health Law Certification***

**All applicants for certification as a health law specialist should be required to qualify in any two out of four categories. The four categories should have the following names: Category 1 to be “Health Law: Advocacy”, Category 2 to be “Health Law: Solicitor’s Work”, Category 3 to be “Health Law: Opinions and Advice” and Category 4 to be “Health Law: Substantial Contribution, Development of Health Law”.**

A specialty in health law requires a broad knowledge of the complex statutory framework and environment in which the provision of health care in Ontario takes place. To this end, it is our view that all lawyers to be certified as health law specialists should have this broad knowledge and experience as evidenced in meeting two of the four categories for specialization. This is akin to the specialty of environmental law which requires that all applicants satisfy two out of the four categories (i.e., litigation, transactional, opinions/advice and substantial contribution) to qualify for that specialty designation. Based on our comparative analysis of the Law Society’s current 13 certified legal specialties, our recommendation in following a similar approach is consistent with what appears to be a general requirement for “broad and varied experience” in the various specialist designations and a general trend that one designation may be achieved through several different routes.

## ***3. Broader Standards for Proposed Category 3 – “Health Law: Opinions and Advice”***

**Proposed Category 3- “Health Law: Opinions and Advice” should include the breadth of advice and opinions regarding issues pertaining to health professionals and health care facilities, including: insurance, environmental law, information technology and employment issues specific to health professionals.**

The range of advice provided in respect of the provision of health care goes well beyond corporate commercial areas, and involves employment, insurance, information technology and environmental, to name a few. Advice provided on these matters is quite specialized in respect of health care professionals and health care facilities since health legislation often impacts on these legal issues. We have proposed additional criteria in Part III to reflect this. We have also proposed language to reflect that the range of opinions and advice may go beyond what is contained in the enumerated list.

#### ***4. Broader Standards for Proposed Category 2 – “Health Law: Solicitor’s Work”***

**Proposed Category 2 – “Health Law: Solicitor’s Work” should include other areas of work such as the development and review of policies and procedures in respect of health professionals and health care facilities.**

We have included specific amendments in Part III to capture other areas of solicitor work in respect of health law. Specifically, the development of policies and procedures is highly important for Health Care Facilities and this has been specifically added to this category. Also, we have proposed language to reflect that the range of work in this area may go beyond what is contained in the enumerated list.

#### ***5. Amend Requirement for Number of Legal Opinions***

**Requirements in Proposed Category 2 should be “200 substantial oral or written legal opinions or 1,500 hours devoted to preparing and/or delivering oral or written legal opinions”.**

With respect to the minimum of 200 substantial oral or written legal opinions, this arbitrary requirement is not appropriate for all forms of health law practice. While the Proposed Standards refer to “substantial” opinions, the current requirement does not take into account the different types and complexity of opinions all falling within the definition of “substantial opinions”. For example, some complex opinions in respect of health professionals starting a new business venture or proposing to deliver an alternative therapy may take a great number of hours to complete. Accordingly, we have proposed an alternate route of 1500 hours devoted to preparing or delivering oral or written opinions, so that lawyers who typically prepare more detailed and involved opinions are not penalized by the number of opinions required.

#### ***6. Broader Advocacy Standards***

**The criteria for assessing Proposed Category 1 – “Health Law: Advocacy” should be broadened to include all forms of written and oral health law advocacy, including: written submissions for administrative tribunals and health professional college committees and panel proceedings; written and oral advocacy on behalf of health care entities and health professionals; written and oral advocacy in respect of health care issues and proposed legislation; and preparation for, and appearances at, all boards, tribunals and other entities that deal with health law matters.**

As currently drafted, the Proposed Standards for “Advocacy” relate primarily to civil litigation and do not reflect the breadth of the work currently undertaken by many of the HLS members. The Standards need to be more comprehensive in order to cover the types of activities and skill sets necessary for an advocacy practice which deals with advocacy in forums other than the courts, as highlighted below.

First, we note that many of our members who are very experienced in health law advocacy and who devote a significant percentage of their practice in this area, would not meet the current standards. We therefore recommend that the Proposed Standards be revised to reflect the broad range of advocacy activities in health law. We have inserted specific amendments in Part III to broaden the Advocacy standards to reflect the reality of advocacy work currently conducted before Ontario’s health law tribunals, as described further below.

Second, paragraph 11 of the Proposed Standards should refer to all health professional colleges, rather than simply certain committees of the College of Physicians and Surgeons of Ontario (“CPSO”). Despite the fact that the CPSO is the most active College, the other 20 health professional Colleges need to be included.

Third, further amendments and additions are required to take into consideration the following College matters:

#### Complaints and Fitness to Practice Committee Proceedings

There are no appearances by lawyers before the Complaints Committee or Fitness to Practice Committees of the Colleges. However, this brings to light an important concern for lawyers practicing in this area. Handling a complaint matter on behalf of a client requires investigating and understanding the complaint, appreciating the professional’s legal and ethical obligations and preparing a full answer and defense on behalf of the professional. This exercise could take a significant amount of time and requires an appreciation of the professional’s legal and ethical obligations and of the relevant health legislation, policies and guidelines. No appearance by the lawyer will be necessary (or even allowed) unless the matter is referred to the Discipline Committee, or in rare circumstances, to the Quality Assurance Committee of the College. However, the written advocacy required in responding to such matters should be recognized in attaining specialist certification.

#### Executive Committee Proceedings

The fact that significant time and expertise is required in preparing a submission to a College Committee is true to an even greater extent in matters involving the Executive Committee of a College (another committee which should be added to the Standards). Proceedings before the Executive Committee of a College do not involve personal appearance by counsel. However, such proceedings can be extremely contentious and require significant work by counsel. For example, the Executive Committee has the

power, pursuant to section 75(c) of the *Health Professions Procedural Code*, to authorize the Registrar to appoint investigators to investigate whether a member may have committed an act of professional misconduct or may be incompetent. Health professionals would first learn of such proceedings when college investigators attend at their offices. Counsel's role in such proceedings may involve:

- Attending at the professional's office during the investigation;
- Reviewing all materials seized by the investigator and, in some cases, challenging the investigator's and College's authority to seize such materials;
- Reviewing investigative and expert reports respecting the professional;
- Retaining and instructing a defense expert to respond to contents of such reports; and
- Preparing a written submission to the Executive Committee on behalf of the professional.

As in Complaints Committee proceedings, Executive Committee proceedings require counsel to investigate the allegations made against the professional, and to have a working knowledge of the medical (or other health professional), legal and ethical issues involved in order to appropriately respond on the professional's behalf. However, the stakes can be very high in such proceedings, since the Executive Committee has the power, not only to refer a member to the Discipline of Quality Assurance Committee, but to impose terms, conditions or limitations and to suspend a member's Certificate of Registration to practice indefinitely pending a hearing on the merits. The time and work involved in such proceedings can easily eclipse the proceedings before any other College committee and should certainly be counted towards health law specialist certification.

### Medical Review Committee

Although the Medical Review Committee of the CPSO (the "MRC") has been suspended and a new medical audit process is undergoing development, time spent in connection with proceedings under the former process and time spent in connection with whatever the renewed process is should certainly count towards specialist certification standards.

Under the old regime, proceedings before the MRC involved reviewing at least 40 and as many as several hundred patient charts with a physician to assess whether the physician's documentation supported his or her OHIP billings. Familiarity with OHIP billing rules, the OHIP Schedule of Benefits and *The Health Insurance Act* are necessary pre-requisites to representing physicians in medical audit proceedings. Such proceedings would typically involve an attendance at the physician's office (or occasionally at the lawyer's office) by an inspector retained by the MRC. The inspector would review patient charts with the physician and interview the physician with respect to his billing practices and practice generally. The inspector would then generate a report, which report will be reviewed by the MRC. The physician may have the opportunity to respond to the inspector's report and would typically attend an interview before the MRC. Again, these proceedings would all involve counsel and the time and work expended in connection

with MRC proceedings should appropriately be included in the specialist certification standards.

### *7. Advocacy Expertise to be Within Health Law*

**The Proposed Standards for Proposed Category 1 – “Health Law: Advocacy” should be focused on advocacy skills within health law, rather than general litigation skills.**

We understand that the Proposed Standards for Advocacy mirror to a great extent, the existing standards for the specialty in civil litigation. We have proposed modifications to the Proposed Standards to highlight that the advocacy skills are to be within the health law context. Otherwise, this section duplicates much of the Civil Litigation Specialty. The proposed modifications are set out in Part III of this Submission.

### *8. Amend Requirement for 100 Days of Appearances*

**The “100 days of appearances before courts and/or tribunals” criterion in paragraph 11 of the Proposed Category of “Health Law: Advocacy” should be amended to be:**

- (a) 100 days of appearances before courts and/or tribunals, commissions and legislative bodies (including attending mediations, pre-trial and pre-hearing conferences, settlement conferences and motions) (“Appearances”); or**
- (b) 50 days of Appearances and preparation of 30 pieces of substantive written advocacy (including complaint responses and submissions to courts, boards, tribunals, commissions and legislative committees).**

As mentioned in discussion under Recommendation 6 above, it appears that the advocacy standards were drafted using primarily a civil litigation model, especially with regard to the “100 days of appearances” criterion in the Proposed Standards. The HLS strongly recommends that this Proposed Standard be amended for the following reasons:

- a) Advocacy takes many forms and is not always court based. Advocacy involves written and oral advocacy, attempting to resolve disputes in a non-adversarial manner and attendance in respect of proceedings that are not court based.
- b) Other than for senior counsel and those in small firms, this standard will not be able to be met by practitioners who are very experienced in health law advocacy.

- c) The Proposed Standards should recognize that good advocacy skills often lead to early resolution of a matter. The courts and the legal profession are increasingly recognizing the value to clients in reducing the amount of appearances in courts and other tribunals. Many health profession regulatory colleges are taking steps to streamline their hearings.
- d) Most litigation does not go to trial. The overwhelming majority of medical malpractice cases are settled before going to trial. That does not mean that counsel involved in those cases are not specialists in advocacy. In fact, it may signal quite the opposite.
- e) We note that the Law Society's Specialty in Civil Litigation itself does not require any specific number of court appearances and court time. We also note that the language used for the Environmental Law specialty is "150 days of *proceedings*" (emphasis added). This is highlighted in our comparative analysis set out in Part IV.
- f) Many College committees do not have appearances by counsel (as highlighted in recommendation 6 above). They are based on written advocacy and investigation. Those College committees that do have hearings have limited time for hearings. For example, on average, the CPSO Discipline Committee, which is by far the busiest of all College Discipline Committees, has only 80 hearing days per year. For a practitioner to average 20 hearing days per year would require a lawyer to participate in fully one-quarter of all of the hearing days before this tribunal. In these circumstances, the specialist certification designation would be unattainable for most lawyers who practice primarily in this sphere.
- g) Given that the proposed health law certification already requires a high percentage of time devoted to health law matters (i.e., 50%) (we note that some other specialties only require 30% of their practice to be devoted to the specialty), we do not think that such additional requirement is necessary.

### ***9. Equivalency for Prior Experience***

**Consideration should be given for offering credit/equivalency (in terms of years of practice) if an individual has practiced in the field of the provision of health care, where the particular position involved specific experience in dealing with the legal/health framework.**

There are a number of members in the health law bar who have entered law after prior careers in the health care field (such as physicians, senior managers, chief executive officers) and in those positions, many of these individuals dealt extensively (in concert with lawyers) with legal and risk management issues. In our view, consideration should be given with respect to a diminution of the requirement for 5 years of recent health law experience, if there has been equivalent experience from a legal/health framework.

### *10. Delete Practice of Discreet Inquiries*

**The practice of discreet inquiries (paragraph 23 of the Proposed Standards) should be deleted to increase transparency and to respect confidentiality of applicants.**

We also recommend the removal of the reference in the Proposed Standards to discreet inquiries being made as part of the assessment of applications and that the practice be discontinued. If persons are to be contacted, then the applicant should be aware of this, in order to enhance transparency and to protect the confidentiality of the applicant. Also, if determinations are to be made based on discreet inquiries, presumably some reasons for refusal will need to be given. How will this be done, if the basis of refusal is from information from discreet inquiries? Also, is there an appeal mechanism if specialization is refused and a requirement that reasons be given?

### *11. Increase Transparency of Certification Process*

**Paragraph 21 of the Proposed Standards should be deleted, and all relevant criteria for assessment in the health law specialty should be specified in order to increase transparency of the certification process.**

It is unclear why satisfaction of all specified requirements would not result in designation as a Health Law Specialist. If there are additional criteria to be considered, these should be specified. Specification of all relevant criteria is required in order for the certification process to be a transparent process. Furthermore, there should be certainty and limits to discretion in any matter involving the certification and regulation of a profession.

### *12. Differential Fees to Increase Accessibility of Specialist Designation*

**There should be differential fee categories for both application and annual fees for the health law specialist designation to increase accessibility of the health law specialist designation.**

In order to ensure that the fees do not create a barrier to accessibility of designation for lawyers in government, in-house counsel, part-time practice, small firms and those working in not-for profit corporations, we recommend that there be a reduced fee for these categories. There is precedent for this with respect to reduced fees for Law Society annual fees (although in respect of different categories).

From the draft brochure provided, we understand that the one time application fee is to be \$428 and the annual fee is \$321. The application fee is approximately an additional 28% of the full Law Society Fee, and the Annual Fee is approximately an additional 21% of the full Law Society Fee.

While the costs may not be a concern if a person is in practice in a law firm that absorbs these costs, there may be a big impact on accessibility if these fees are to be paid by the individual as would likely be the case in government, in-house counsel positions, legal aid clinics and not for profit entities. In addition, having a specialist designation may be seen by those entities with a limited budget, to be an unnecessary expense, even though it is helpful to both the public, professional and such entities to have such designation.

### ***13. Flexibility re References from Employers and Co-Workers***

**References should be permitted from employers and co-workers of applicants who are in-house counsel, work within government or who otherwise may have difficulty in obtaining four current referees who are familiar with their work. The employers or co-workers should be persons other than partners or associates.**

It may be very difficult for in-house counsel or government counsel who have worked in their positions for a significant period of time to obtain four references from persons other than employers and co-workers. Such counsel will be left with relying on legal practitioners who many not be intimately familiar with their work.

We note, for example, that the standards for the Bankruptcy and Insolvency Law Specialty do not expressly exclude employers as potential referees. Therefore, we would suggest, at a minimum, that for those lawyers who are unable to obtain four current referees, that referees who are employers or co-workers (other than partners or associates) be permitted to act as referees.

### ***14. Clarify all Eligibility Requirements and Composition of Health Law Specialist Committee to Increase Transparency***

**The Law Society criteria for certification (from its bylaws) should be reproduced in the application materials, and the composition of the Health Law Specialty Committee (positions, not names) should be specified in order to increase the transparency of the certification process.**

Finally, we recommend that the Law Society criteria (from its bylaws) be reproduced in the Application materials, and that the composition of the Health Law Specialty Committee (positions, not names) also be specified in order to clarify all of the requirements and increase the transparency of the certification process.

## **PART III PROPOSED REVISIONS TO THE STANDARDS**

- A. PROPOSED REVISIONS TO THE STANDARDS WITH CHANGES HIGHLIGHTED**
  
- B. PROPOSED REVISIONS TO THE STANDARDS WITH PROPOSED CHANGES ACCEPTED**

**PART III OF SUBMISSION OF THE HEALTH LAW SECTION OF THE  
ONTARIO BAR ASSOCIATION RE PROPOSED STANDARDS FOR  
CERTIFICATION FOR SPECIALISTS IN HEALTH LAW**



**CERTIFIED SPECIALIST PROGRAM**

**STANDARDS FOR CERTIFICATION  
HEALTH LAW**

**Definition of Health Law Specialty**

1. Health law is that branch of the practice of law pertaining to the provision of legal advice and services in respect of the provision of health care.

**Designation**

2. An applicant who is certified as a specialist in health law ~~advocacy~~ may be identified as a *Certified Specialist (Health Law: ~~Advocacy~~)*.
- ~~3. An applicant who is certified as a specialist in health law general counsel matters, may be identified as a *Certified Specialist (Health Law: General Counsel)*~~
- ~~4. An applicant who is certified as a specialist in the advocacy and general counsel subspecialties may be identified as a *Certified Specialist (Health Law: Advocacy/General Counsel)*~~

**Achieving Specialist Certification in Health Law**

- ~~5.~~ 3. Applicants must comply with the requirements for certification set out in the Policies Governing the Law Society's Certified Specialist Program ("Policies"), particularly those relating to:
  - Minimum Years of Practice and Recent Experience;
  - Substantial Involvement in the Speciality Area;
  - Professional Development;
  - References;
  - Professional Standards; and
  - Application Fee.
- ~~6.~~ 4. ~~All~~ Applicants must satisfy the following requirements in order to demonstrate their substantial involvement in health law:
  - (a) Applicants will have practised law for 7 years.
  - (b) ~~(a) applicants applying in one subspecialty~~ Applicants will have devoted a minimum of 50% of their practice concentration to health law averaged over the 5 years of their recent experience; and

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- ~~(b) — applicants applying in both subspecialties will have devoted a minimum of 75% of their practice concentration to health law averaged over the 5 years of their recent experience; and~~
- (c) ~~during~~During the 5 years of their recent experience, applicants will have attained broad and varied experience along with a mastery of substantive law and procedures in ~~the area~~health law, and comply with the ~~Health Law Experience~~health law experience requirements set out below.

5. ~~7.~~In the event that applicants do not entirely meet the experience requirements, including number of years in practice, tasks accomplished or hearing days completed, they may apply to the Health Law Specialty Committee (“Committee”) for consideration of their individual circumstances or their related (non-practice) skills including experience in health law, policy or administration. Consideration will be given in circumstances where applicants have:

- (a) limited their practice in recent years to a particular area of health law or have been involved in matters of extraordinary length and complexity; or
- (b) engaged in advanced course work or performed related activities such as teaching, authoring books or articles for publication, completing post-graduate or other studies, participating in the development and/or presentation of professional development programs, research, participating in the policy development process, drafting legislation and/or instruments, participating as active members on boards, committees, or tribunals, or on the executive of any organization related to health law or any other experience that applicants consider relevant to their application.

Applicants applying for consideration under this paragraph must, in addition to the brief description of their practice required pursuant to paragraph ~~8.6~~, include with their application:

- (c) a detailed description of their individual circumstances or related (non-practice) skills; and
- (d) references from the institutions or organizations from which their experience is drawn, references from peers and a complete list of publications.

6. ~~8.~~All applicants must include a brief description (no more than 100 words) of the nature of their practice in relation to the specialty area.

### Health Law Experience

7. ~~9.~~During the 5 years of their recent experience applicants must have performed ~~the tasks set out below as follows:~~tasks in at least 2 of the 4 categories enumerated below.

~~Route 1: Applicants seeking the advocacy designation must have performed the tasks as required in Part I.~~

~~Route 2: Applicants seeking the general counsel designation must have performed the tasks as required in Part II.~~

~~Route 3: Applicants seeking the advocacy and the general counsel designation must have performed the tasks as required in Part I and Part II.~~

8. Applicants are asked to place a check mark (✓) next to the tasks they are selecting from the categories below to demonstrate their health law experience and include the Standards with their application package, along with any supplementary information required in the standards.

~~PART I - HEALTH LAW - ADVOCACY~~ CATEGORY 1 - HEALTH LAW: ADVOCACY

9. The applicant has acted as an advocate in matters where health care issues were the primary focus, in either:

(a) 100 days of appearances before courts and/or tribunals, commissions and legislative bodies (including attending mediations, pre-trial and pre-hearing conferences, settlement conferences and motions) (“Appearances”) or;

(b) 50 days of Appearances and preparation of 30 pieces of substantive written advocacy (including complaint responses and submissions to courts, tribunals, boards, commissions and legislative committees).

~~During the 5 years of their recent experience applicants must have attained broad and varied experience and generic skills and a mastery of matters of sufficient complexity with respect to health law advocacy.~~ Applicants are asked to identify the number of days spent before each of the following courts, tribunals or regulatory bodies during the 5 years of recent experience.

Actions before the Superior Court of Justice \_\_\_\_\_

Applications before the Superior Court of Justice \_\_\_\_\_

Appeals before the Ontario Court of Appeal \_\_\_\_\_

Hearings before the Health Professions Appeal and Review Board \_\_\_\_\_

Hearings before the Health Services Appeal and Review Board \_\_\_\_\_

Hearings before the Consent and Capacity Board \_\_\_\_\_

Hearings before the Discipline Committee of the Regulatory Body Governing a Regulated Health Profession \_\_\_\_\_

Matters before the Complaints Committee of the Regulatory Body Governing a Regulated Health Profession \_\_\_\_\_

Matters before the Executive Committee of the Regulatory Body Governing a Regulated Health Profession \_\_\_\_\_

Matters before the Medical Review Committee of the CPSO or any other audits of billings before a health professional regulatory body ) \_\_\_\_\_

Hearings before the Fitness to Practice Committee of a Regulated Health Profession \_\_\_\_\_

Hearings before the Quality Assurance Committee of a Regulated Health Profession

Hearings before Boards or Committees constituted under By-Laws of Hospitals or other health care organizations

Appeals and/or Judicial Reviews to the Divisional Court on administrative decisions from health care Tribunals/Regulatory Bodies

Coroner's inquests on matters relating to the provision of health care

Public Inquiries dealing with health

Matters before the Information and Privacy Commissioner

Hearings before other health care related tribunals, regulatory bodies, or review boards (please identify venue)

10. *\*There is a minimum expectation that an applicant will have had some trial and/or hearing experience. The number of trials and/or hearings is not determinative and due regard is given to the complexity of the issues before the court and/or tribunal. If specific trial and/or hearing experience is absent, there may be special circumstances that warrant consideration. When giving examples of experience, list the best two or three, if applicable. The trial and/or hearing experience to be considered may be outside the five-year period of recent experience. Applicants also should note that experience will be assessed recognizing that in some areas of the province certain matters are more prevalent than others.*

11. ~~10.~~ Applicants are asked to confirm their knowledge and experience with ~~each of these~~ the tasks ~~in~~ listed in paragraph 9, in each of (a) Advocacy Skills, (b) Principles and Issues and (c) Legislation by placing a check mark (✓) next to each task to demonstrate their health law advocacy experience.

(a) **Advocacy Skills**

- Identify the appropriate procedure or venue, and the necessary parties to resolve the client's problem
- Identify the appropriate causes of action, claim, or remedy in any given case
- Identify the full range of ~~defenses~~ defences or remedies that are available and ~~the~~ appropriate ~~defenses~~ in any given case
- Draft appropriate documentation to advance or defend a claim or matter
- Apply the law relevant to limitation periods, minors, persons of unsound mind and the discoverability principle
- Analyze, research and develop an appropriate theory to advance or defend a claim or matter

- ❑ Marshall the necessary factual evidence to advance or defend a claim or matter, including witnesses, documents, including those in the possession of a third party, and demonstrative evidence
- ❑ Marshall the necessary opinion evidence of experts to advance or defend a claim or matter
- ❑ Conduct discovery, [examination and/or](#) cross-examination in advance of the hearing or trial on affidavits, and of ~~non-party~~ witnesses including experts on health care issues
- ❑ Apply the *Rules of Civil Procedure*, the *Statutory Powers Procedures Act* and/or the rules of procedure applicable to the forum
- ❑ Draft and argue typical interlocutory matters and significant motions
- ❑ Prepare offers to settle and requests to admit
- ❑ Advise client with respect to the full range of alternative dispute resolution options
- ❑ Advocate effectively in negotiations, mediations, pre-trials and/or pre-hearings and settlement conferences
- ❑ Advocate effectively the client's position on motions, applications, trial (jury and/or non-jury), [matters requiring written submissions](#) and/or hearings and appeals
- ❑ Advise client with respect to the appropriate procedure to present matters of leave to appeal and judicial review
- ❑ Identify the appropriate procedures and the appropriate parties to bring a matter before a statutory body
- ❑ Effectively examine and cross-examine expert witnesses in regard to health care matters at a trial or hearing
- ❑ Identify the appropriate relief to be granted or refused in any given case and prepare the appropriate documents to obtain such relief
- ❑ ~~Carried~~[Carry](#) a contested matter forward to resolution before a tribunal and/or court
- ❑ [Prepare or deliver submissions on behalf of a health profession and/or College before Health Professions Advisory Council](#)
- ❑ [Prepare or deliver submissions to Government on the impact of proposed health legislation](#)

(b) **Principles and Issues**

~~Applicants will have dealt with the following legal principles before a court and/or tribunal:~~

- ❑ Duty of care
  - ❑ Fiduciary Duty
  - ❑ Informed Consent

- Disclosure of adverse event
- Standard of care
- Negligence vs. error of judgment
- Direct and vicarious liability
- Misrepresentation or Fraudulent Concealment
- Privacy/Confidentiality
- Causation
- Proof of damages
- ~~Health~~[Disclosure of health](#) records or clinical records
- By   Laws
- Limitation periods - Discoverability rule
- [Incapacity and consent to treatment](#)
- [Substitute decision making](#)
- [Professional misconduct and/or breach of professional standards](#)
- [Incompetence or incapacity to practice a health profession](#)
- [Personal health information \(e.g. access and correction of records\)](#)
- [Conflict of interest while practicing a health profession](#)
- [Hospital privileges](#)
- [Health care products liability](#)
- [Other health law issues \(please list\)](#)

(c) **Legislation**

Applicants will have advised and/or represented clients with respect to issues/matters arising from [some or all, but not limited to,](#) the following [health care](#) legislation [and related regulations](#):

- Health Care Consent Act*
- Substitute Decisions Act*
- Mental Health Act*
- Regulated Health Professions Act, [1991](#)*

- ~~Individual Health Care College Legislation i.e.~~ Health profession specific legislation (e.g., Medicine Act, 1991; Nursing Act, 1991)
- Coroner's Act*
- Public Hospitals Act*
- Personal Health Information Protection Act, 2004* ~~(PHIPA)~~
- Health Insurance Act*
- [Canada Health Act](#)
- [Long-term care legislation](#)
- [Other health legislation \(please list\)](#)

~~11. During the 5 years of recent experience the applicant has acted as an advocate in at least 100 days of appearances before courts and/or tribunals, during the 5 years of recent experience, where health law issues were the primary focus. Applicants are asked identify the number of days spent before each of the following courts, tribunals or regulatory bodies during the 5 years of recent experience.~~

~~Actions and Applications before the Superior Court of Justice~~ \_\_\_\_\_

~~Appeals before the Ontario Court of Appeal~~ \_\_\_\_\_

~~Hearings before the Health Professions Appeal and Review Board~~ \_\_\_\_\_

~~Hearings before the Consent and Capacity Board~~ \_\_\_\_\_

~~Hearings before the College of Physicians and Surgeons Disciplinary Committee~~ \_\_\_\_\_

~~Hearings before the College of Physicians and Surgeons Complaints Committee~~ \_\_\_\_\_

~~Hearings before the College of Physicians and Surgeons Fitness to Practice Committee~~ \_\_\_\_\_

~~Hearings before the College of Physicians and Surgeons Quality Assurance Committee~~ \_\_\_\_\_

~~Hearings before Boards or Committees constituted under hospital By Laws~~ \_\_\_\_\_

~~Appeals to the Divisional Court on administrative decisions from health care Tribunals/Regulatory Bodies~~ \_\_\_\_\_

~~Coroner's inquests on matters relating to the provision of health care~~ \_\_\_\_\_

~~Public inquiries dealing with health~~ \_\_\_\_\_

~~Discipline hearings before other health college disciplinary tribunals, regulatory bodies, or review boards~~ \_\_\_\_\_

12. Applicants must provide with their application 3 summaries of proceedings outlining their advocacy experience each no longer than 2 pages and include the following information to illustrate their Health Law Experience. Information must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Issues involved in matter
- Complexity of the matter

- Who applicant represented
- Type of proceeding (application, claim, motion, tribunal, etc.)
- Synopsis of how matter resolved
- Citation, if available (reported or unreported)
- Name of other lawyers involved or if other side is unrepresented
- Name of judge ~~or~~, mediator or arbitrator
- Name of court ~~or~~, tribunal or committee
- Date matter heard during main proceeding (trial, application, hearing, ADR conference, etc.)
- Length of time it took to resolve matter during main proceeding
- Appeal of decision, if any
- Role as counsel, lead or co-counsel

**~~PART II – HEALTH LAW – GENERAL COUNSEL~~ CATEGORY 2: HEALTH LAW: SOLICITOR’S WORK**

~~Applicants seeking the General Counsel designation must meet the requirements of at least 2 of the 3 categories enumerated below, or substantially complete a combination of all 3 categories.~~

13. ~~**Category 1: Health Law: General Counsel – Corporate/Commercial**~~ The applicant has undertaken solicitor’s work, including organization of businesses, drafting, corporate governance and corporate transactions, where health care issues were the primary focus.

(a) Applicants must include with their application a summary (no more than 200 words) of their practice as it relates to health law in the ~~corporate commercial~~ area of solicitor’s work, and include a brief description of at least 3 significant transactions, business organizations or contract negotiations that they have been involved in.

(b) The applicant has performed a minimum of 30 tasks in respect of the health law sector (being individuals and entities with a health care focus, or in a matter in respect of which health law considerations are of a primary or substantial importance). Applicants are asked to place a check mark (✓) next to the tasks they are selecting to demonstrate their health law – ~~corporate/commercial~~ solicitor’s work experience.

**(i) Establishment/Organization of Health Related Business Structures**

- Health care ~~professionals~~ professional incorporation or other business structure
- Cost-Sharing/Associate Agreements
- Family Health Networks/Teams/Groups
- Partnerships, unincorporated associations, corporations, joint ventures
- Alternative Payment Plans
- Government agencies, boards/transfer payment organizations
- Health care facilities, including: long-term care facilities, nursing homes, hospitals, community care access centres, independent health facilities, health care clinics, diagnostic facilities, rehabilitation companies, organizations involved in the provision of health or health-related services, pharmaceutical companies (collectively, “Health Care Facilities”)
- Local Health Integration Networks
- Other

**(ii) Business Reorganizations**

Act on behalf of client with respect to:

- ❑ Purchase & sale of Health Care Facilities (shares and asset transactions)
- ❑ Amalgamation of Health Care Facilities
- ❑ Implementation of ~~Restructuring Initiatives~~[restructuring initiatives](#) (e.g., LHINs, HSRC & Ministerial Directions, Devolution of Government Services)
- ❑ Transfers of ~~Services~~[services](#) between Health Care Facilities
- ❑ Structuring strategic alliances between Health Care Facilities
- ❑ Structuring ~~Joint Venture~~[joint venture](#) arrangements
- ❑ Establishing ~~Health Care Buying Groups~~[health care buying groups](#)
- ❑ Winding up/dissolution of Health Care Facilities
- ❑ Structuring of ~~Public/Private Partnerships~~[public/private/partnerships](#)
- ❑ Oversight of health regulatory issues in commercial financings
- ❑ [Other](#)

**(iii) Corporate Governance**

- ❑ Provide advice regarding directors & officers' liability
- ❑ [Provide general advice to Board of Directors](#)
- ❑ Draft Medical/Administrative By-Laws
- ❑ Draft corporate materials (e.g., resolutions, board policies, ~~Committee Charters~~[committee mandates/terms of reference, organizational policies](#))
- ❑ Develop Board orientation/continuing education sessions and materials
- ❑ Organize [and/or advise on](#) annual general meetings
- ❑ Organize [and/or advise on](#) meetings of members and directors
- ❑ Provide advice regarding conflict of interest
- ❑ [Other](#)

**(iv) Negotiating and Drafting Contracts**

- ❑ Asset/share purchase agreements & related documentation
- ❑ Strategic alliance agreements
- ❑ Memoranda of understanding with government
- ❑ Memoranda of understanding ~~among~~[between](#) Health Care Facilities
- ❑ Funding agreements on behalf of health care providers and institutions or funding bodies
- ❑ Incorporation documents, including articles of incorporation/letters patent
- ❑ Research & ~~Clinical Trial~~[clinical trial](#) agreements
- ❑ Services ~~Agreements~~[agreements](#)
- ❑ Manufacturing and ~~Distribution/Supply Agreements~~[distribution/supply agreements](#) (e.g., medical devices & drugs, medical equipment)
- ❑ Outsourcing ~~Agreements~~[agreements](#)
- ❑ Consulting and ~~Management Agreements~~[management agreements](#)
- ❑ Agreements with Health Care Facilities and ~~Health Professionals~~[health professionals](#)
- ❑ Development and implementation of procurement processes for goods and services in the health care sector (RFPs, RFQs)
- ❑ Agreements regarding health information management [and/or technology](#) systems
- ❑ [Other](#)

**(v) Non-Share Capital Corporations**

- ❑ Establish non-share capital ~~corporation~~[corporations](#) (e.g., application for letters patent, drafting objects and special provisions, supplementary letters patent)
- ❑ Advise regarding non-share capital corporations
- ❑ Prepare ~~By-Laws~~[by-laws](#) and ~~By-Law~~[by-law](#) amendments

- Other

**(vi) Establishment of Charities and Foundations**

- Apply for the registration of charities
- Advise regarding ~~charity~~ issues related to charities (e.g., revenue generation) and the implications of charitable status
- Establish charitable foundation(s) for ~~health care facilities~~ Health Care Facilities
- Other

**(vii) Policies and Procedures, Guidelines and Other Tools**

- Develop policies, procedures, guidelines or other tools for Health Care Facilities or health professionals
- Review policies, procedures, guidelines or other tools for compliance with health care legislation/standards
- Develop and implement risk management strategies
- Other

~~14. **Category 2: Health Law: General Counsel – Opinions and Advice**~~

- ~~(a) Applicants must also include with their application, 5 summaries of substantive opinions rendered to illustrate their experience in the area of health law opinions and advice.~~

**CATEGORY 3: HEALTH LAW: OPINIONS AND ADVICE**

14. ~~(b)~~ The ~~applicant~~ Applicant has prepared and/or provided a minimum of 200 substantial oral or written legal opinions or memoranda of law and/or spent a minimum of 1500 hours preparing, researching and providing advice in respect of health care litigation, transactions or health sector/industry management regarding the application, interpretation of, or compliance with health law.

- (a) Applicants must also include with their application, 5 summaries of substantive opinions and/or memoranda of law rendered to illustrate their experience in the area of health law opinions and advice. To the extent that opinions are highly confidential or proprietary in nature, the opinions should not be disclosed.

(b) (e) Applicants seeking to qualify under this category will have a broad and varied experience in providing advice and opinions in the area of health law. To demonstrate this experience applicants are asked to identify with a checkmark (✓) next to the areas in which they have rendered advice and/or opinions ~~as listed below,~~ in some or all, but not limited to, the following matters:

- ~~Health Sector Governance issues in respect of Health Care Facilities, Local Health Integration Networks etc.~~

**Opinions and Advice**

- ~~Hospital Appointments/Privileges~~

**Regulation, approvals, and duties of health care facilities/organizations, including:**

- Hospitals
- Psychiatric facilities

- Long-term care facilities
- Laboratories
- Pharmacies
- Independent health facilities
- Other \_\_\_\_\_

~~— Licensing and~~  **Regulation of Health Professions** and duties of health care providers, including:

- Professionals governed by the Regulated Health Professions Act, 2001
- Social workers and social service workers
- Providers of alternative therapies
- Professional corporations
- Other \_\_\_\_\_

Rights and obligations in relation to appointments and privileges of health care professionals in hospitals

Regulation and delivery of community health services, including:

- Community services
- Homes for Special Care
- Supportive housing
- Community mental health
- Other \_\_\_\_\_

Regulation and delivery of emergency health services, including:

- Delivery of ambulance services
- Certification of paramedics and others involved in the delivery of emergency health services
- Other \_\_\_\_\_

Advice to regulatory/oversight bodies charged with regulation/oversight of persons and activities in the health care sector (e.g., Ministry of Health and Long-Term Care, Health Canada, LHINs, medical officers of health, privacy commissioners, health profession colleges)

Consent, capacity, and substitute decision-making (e.g., in relation to treatment, admissions, finances, information)

Mental health issues

Privacy and confidentiality of health information, including:

- Collection, use and disclosure of health information
- Access to and correction of records of health information
- Practices and procedures to protect records of health information
- Addressing complaints and reviews concerning compliance with privacy requirements

Other \_\_\_\_\_

**Health records management**

- Records retention requirements
- Obligations regarding contents of records
- Other \_\_\_\_\_

**Issues arising from the use of information technology in health care delivery**

**Issues related to medical devices and technologies, including:**

- Sale of devices and technologies
- Marketing of devices and technologies
- Use of devices and technologies
- Intellectual property protection for devices and technologies
- Other \_\_\_\_\_

**Issues related to drugs, including:**

- Sale of drugs
- Marketing of drugs
- Pricing of drugs
- Listings/formularies of drugs in relation to provincial benefits
- Interchangeability designations for drugs
- Processes for access to unapproved drugs
- Intellectual property protection for drugs
- Alternative therapies and natural health products
- Other \_\_\_\_\_

**Issues related to organ and tissue donation**

**Issues related to the use blood and blood products**

**Establishment, enforcement and compliance with public health protection and promotion requirements, including:**

- Reporting requirements
- Inspections
- Emergency preparedness
- Immunization
- Infection control
- Tobacco regulation
- Quarantine and other detention
- Other \_\_\_\_\_

**Funding and payment issues in relation of health care services and goods**

- Eligibility of persons seeking services and goods for funding
- Eligibility of health care providers for funding

- Eligibility of health care services or goods for funding
- Charging of fees, including restrictions on the charging of fees
- Fulfilment of accountability requirements
- Other

~~Licensing and Regulation of the Health Sector, including laboratories, pharmaceutical/drug programs (including marketing and distribution issues), medical devices~~

**Liability in relation to activities of:**

- Health care providers
- Health care institutions
- Use of drugs, devices, technology and other health products
- Other

**Quality Assurance and Risk/Error Management, including:**

Insurance issues

- ~~patient~~  Patient safety issues
  - ~~health product liability issues~~
  - ~~occupier's liability issues~~
  - ~~organizational, staff and patient safety issues~~

~~Privacy, Confidentiality and the Regulation of Health Information~~

- Error/incident reporting obligations
- Protection of quality of care information

Other

~~Health Records Management~~

**Compliance with waste management and environmental requirements imposed on health care organizations and providers**

**Constitutional law matters related to the health care sector (e.g., rights and obligations arising from the *Charter*, division of powers issues)**

**Advice concerning criminal and regulatory offences in the health care sector**

**Assisted human reproduction**

**Genetics**

**Medical/ethical/legal issues, including:**

- End-of-life issues
- Resource allocation issues
- Other

~~Malpractice and Institutional Liability~~

**Issues concerning health care delivery through the private sector**

**Employment and labour law issues specific to health care providers, including:**

- Non-competition/non-solicitation by health care providers
- Obligations concerning the delivery of essential health services
- Mandatory reporting requirements concerning actions of health care providers
- Health care providers as independent contractors
- Other

~~Public Health, including emergency preparedness, communicable disease reporting obligations and quarantine~~

**Health research, including:**

- Obligations of research ethics boards
- Requirements concerning the **conduct of clinical trials**
- Research funding arrangements
- Regulatory approvals in relation to research
- Intellectual property issues in relation to research
- Other

**Planning in relation to health care system restructuring**

**Other**

**Legislation**

Applicants will have advised clients with respect to issues/matters arising from some or all, but not limited to, the following health legislation and related regulations:

- Ambulance Act
- Ambulance Services Collective Bargaining Act, 2001
- Assisted Human Reproduction Act
- ~~Health Care funding issues, including issues related to the  *Canada Health Act* and related provincial health insurance statutes~~

~~Insurance for health professionals and institutions~~

~~Medical/Legal/Ethical issues, including matters related to:  
 consent and capacity~~

- Cancer Act
- Commitment to the Future of Medicare Act, 2004
- Community Care Access Corporations Act, 2001
- Community Psychiatric Hospitals Act
- Coroners Act
- Drug and Pharmacies Regulation Act
- Drug Interchangeability and Dispensing Fee Act
- Drugless Practitioners Act
- Emergency Management Act
- Food and Drug Act
- Healing Arts Radiation Protection Act
- Health Care Consent Act
- Health Facilities Special Orders Act

- [Health Insurance Act](#)
- [Health Protection and Promotion Act](#)
- [Homes for Special Care Act](#)
- ~~community treatment orders under~~  [Homes for the Aged and Rest Homes Act](#)
- [Hospitals Labour Disputes Arbitration Act](#)
- [Immunization of School Pupils Act](#)
- [Independent Health Facilities Act](#)
- [Laboratory and Specimen Collection Centre Licensing Act](#)
- [Long-Term Care Act](#)
- [Mandatory Gunshot Wounds Reporting Act](#)
- [Mental Health Act](#)
  - ~~conduct of clinical trials~~
  - ~~decision making by research ethics board~~
  - ~~end of life issues~~
  - ~~resource allocation issues~~
  - ~~tissue/organ donation~~
  - ~~reproductive health issues~~
  - ~~patient disclosure/duty to warn~~
  - ~~access to health care~~
- [Nursing Homes Act](#)
- [Ontario Drug Benefits Act](#)
- [Personal Health Information Protection Act, 2004](#)
- [Private Hospitals Act](#)
- [Public Hospitals Act](#)
- [Quality of Care Information Protection Act, 2004](#)
- [Quarantine Act](#)
- [Regulated Health Professions Act, 1991, and related health profession-specific statutes](#)
- [Smoke Free Ontario Act](#)
- [Social Work and Social Service Work Act, 1998](#)
- [Substitute Decisions Act](#)
- [Trillium Gift of Life Network Act, 2001](#)
- [Other](#)

~~15. **Category 3: Health Law: General Counsel – Substantial Contribution, Development of Health Law**~~

**CATEGORY 4: HEALTH LAW: SUBSTANTIAL CONTRIBUTION, DEVELOPMENT OF HEALTH LAW**

15. The applicant has made a substantial contribution to the development of health law through a combination of all or some of the following activities. Applicants are asked to place a checkmark (√) next to activities engaged in: and to include with their application, 3 summaries of their areas of substantial contribution, development of health law, to illustrate why they are applying under this Category.
- ~~Drafting~~ [Drafting health legislation/regulations](#)
  - Teaching health law at an accredited post-secondary institution
  - Contributing to health law literature through publications, including commentary, research papers, and treatises
  - Receiving graduate degrees or other academic qualifications in the area of health law

- ❑ Making presentations at conferences and continuing education programs in the area of health law to lawyers and professionals in the health sector
- ❑ Contributing to the public's understanding of health law matters through public education, including oral presentations and the development of written materials
- ❑ Participating as an active member on health sector boards or tribunals, or on the executive of any organization related to health law
- ❑ Participating as an active member on research ethics boards
- ❑ [Participating as an active member of a government body appointed to address health law issues](#)

## Professional Development

16. For each of the 5 years of recent experience, applicants must attest to the completion of annual professional development requirements. For 2004 and all subsequent years, the requirements are:
- (a) Not less than 50 hours of self-study; and
  - (b) Not less than 18 hours of relevant professional development, at least 6 hours of which consist of participation in CLE programs that have either been accredited or are capable of being accredited by the Committee. The balance, if any, of the 18 hour professional development requirement may be met through alternative methods such as, but not limited to:  
~~The balance, if any, of the 18 hour professional development requirement may be met through alternative methods such as, but not limited to:~~
    - ~~(e)~~ — Teaching or being guest lecturer on a course in the specialty area;
    - ~~(d)~~ — Writing and editing of published books or articles relating to the specialty area;
    - ~~(e)~~ — Graduate or post-graduate studies in the specialty area;
    - ~~(f)~~ — Involvement in the development and/or presentation of professional development programs related to the specialty area; or
    - ~~(e)~~ — Involvement in the development of policy related to the specialty area.

## References

17. Applicants must submit 4 references from legal practitioners eligible to practise law in Ontario who have direct knowledge of the applicant's work in Health Law in the 5 years of the applicant's recent experience and can attest to the applicant's competent performance of the tasks outlined under Health Law Experience above.
18. Applicants should not include as reference: judges, partners, associates, co-workers, employers, counsel to their firm, employees, relatives, members of the Health Law Specialty Committee or the Certified Specialist Board, benchers or employees of the Law Society-. However, if applicants because of their particular career paths are unable to provide 4 references from legal practitioners other than those excluded in this paragraph, references may be obtained from employers and co-workers, provided that reasons are provided for same.
19. The Statements of Reference must be submitted with the application to the Law Society in confidential envelopes, which have been sealed, signed and dated by the referees. Envelopes, which have been opened or appear to have been tampered with, will not be accepted.

## Assessment of Application by Health Law Specialty Committee

20. The Committee will consider the totality of an applicant's practice in Health Law, the applicant's Professional Development Report and references.
- ~~21. Applicants should not assume that completion of all of the enumerated practice concentration and experience requirements will automatically entitle them to certification as a specialist.~~
21. ~~22.~~ Applicants may be required to provide additional information to the Committee to facilitate the assessment process.
- ~~23. The Committee may make discreet inquiries, as it deems appropriate, to determine the applicant's eligibility and suitability for certification as a specialist.~~

Document comparison done by DeltaView on Thursday, September 01, 2005 3:33:16 PM

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Document 2	file://N:/health/lawyers/jgwhite/Active Issues/lsucstandardsfinaljmgaccepted and sb_for approval sept_2.doc
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Total changes	631

**PART III OF SUBMISSION OF THE HEALTH LAW SECTION OF THE  
ONTARIO BAR ASSOCIATION RE PROPOSED STANDARDS FOR  
CERTIFICATION FOR SPECIALISTS IN HEALTH LAW**



**CERTIFIED SPECIALIST PROGRAM  
STANDARDS FOR CERTIFICATION  
HEALTH LAW**

**Definition of Health Law Specialty**

1. Health law is that branch of the practice of law pertaining to the provision of legal advice and services in respect of the provision of health care.

**Designation**

2. An applicant who is certified as a specialist in health law may be identified as a *Certified Specialist (Health Law)*.

**Achieving Specialist Certification in Health Law**

3. Applicants must comply with the requirements for certification set out in the Policies Governing the Law Society's Certified Specialist Program ("Policies"), particularly those relating to:
  - Minimum Years of Practice and Recent Experience;
  - Substantial Involvement in the Speciality Area;
  - Professional Development;
  - References;
  - Professional Standards; and
  - Application Fee.
4. All Applicants must satisfy the following requirements in order to demonstrate their substantial involvement in health law:
  - (a) Applicants will have practised law for 7 years.
  - (b) Applicants will have devoted a minimum of 50% of their practice concentration to health law averaged over the 5 years of their recent experience; and
  - (c) During the 5 years of their recent experience, applicants will have attained broad and varied experience along with a mastery of substantive law and procedures in health law, and comply with the health law experience requirements set out below.
5. In the event that applicants do not entirely meet the experience requirements, including number of years in practice, tasks accomplished or hearing days completed, they may apply to the Health Law Specialty Committee ("Committee") for consideration of their individual circumstances or their

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related (non-practice) skills including experience in health law, policy or administration. Consideration will be given in circumstances where applicants have:

- (a) limited their practice in recent years to a particular area of health law or have been involved in matters of extraordinary length and complexity; or
- (b) engaged in advanced course work or performed related activities such as teaching, authoring books or articles for publication, completing post-graduate or other studies, participating in the development and/or presentation of professional development programs, research, participating in the policy development process, drafting legislation and/or instruments, participating as active members on boards, committees, or tribunals, or on the executive of any organization related to health law or any other experience that applicants consider relevant to their application.

Applicants applying for consideration under this paragraph must, in addition to the brief description of their practice required pursuant to paragraph 6, include with their application:

- (c) a detailed description of their individual circumstances or related (non-practice) skills; and
  - (d) references from the institutions or organizations from which their experience is drawn, references from peers and a complete list of publications.
6. All applicants must include a brief description (no more than 100 words) of the nature of their practice in relation to the specialty area.

### **Health Law Experience**

- 7. During the 5 years of their recent experience applicants must have performed tasks in at least 2 of the 4 categories enumerated below.
- 8. Applicants are asked to place a check mark (✓) next to the tasks they are selecting from the categories below to demonstrate their health law experience and include the Standards with their application package, along with any supplementary information required in the standards.

### **CATEGORY 1 - HEALTH LAW: ADVOCACY**

- 9. The applicant has acted as an advocate in matters where health care issues were the primary focus, in either:
  - (a) 100 days of appearances before courts and/or tribunals, commissions and legislative bodies (including attending mediations, pre-trial and pre-hearing conferences, settlement conferences and motions) (“Appearances”) or;
  - (b) 50 days of Appearances and preparation of 30 pieces of substantive written advocacy (including complaint responses and submissions to courts, tribunals, boards, commissions and legislative committees).

Applicants are asked to identify the number of days spent before each of the following courts, tribunals or regulatory bodies during the 5 years of recent experience.

Actions before the Superior Court of Justice \_\_\_\_\_

Applications before the Superior Court of Justice \_\_\_\_\_

Appeals before the Ontario Court of Appeal \_\_\_\_\_

Hearings before the Health Professions Appeal and Review Board \_\_\_\_\_

Hearings before the Health Services Appeal and Review Board \_\_\_\_\_

Hearings before the Consent and Capacity Board \_\_\_\_\_

Hearings before the Discipline Committee of the Regulatory Body Governing a Regulated Health Profession \_\_\_\_\_

Matters before the Complaints Committee of the Regulatory Body Governing a Regulated Health Profession \_\_\_\_\_

Matters before the Executive Committee of the Regulatory Body Governing a Regulated Health Profession \_\_\_\_\_

Matters before the Medical Review Committee of the CPSO or any other audits of billings before a health professional regulatory body ) \_\_\_\_\_

Hearings before the Fitness to Practice Committee of a Regulated Health Profession  
\_\_\_\_\_

Hearings before the Quality Assurance Committee of a Regulated Health Profession  
\_\_\_\_\_

Hearings before Boards or Committees constituted under By-Laws of Hospitals or other health care organizations \_\_\_\_\_

Appeals and/or Judicial Reviews to the Divisional Court on administrative decisions from health care Tribunals/Regulatory Bodies \_\_\_\_\_

Coroner's inquests on matters relating to the provision of health care \_\_\_\_\_

Public Inquiries dealing with health \_\_\_\_\_

Matters before the Information and Privacy Commissioner \_\_\_\_\_

Hearings before other health care related tribunals, regulatory bodies, or review boards (please identify venue) \_\_\_\_\_

- 10.** *There is a minimum expectation that an applicant will have had some trial and/or hearing experience. The number of trials and/or hearings is not determinative and due regard is given to the complexity of the issues before the court and/or tribunal. If specific trial and/or hearing experience is absent, there may be special circumstances that warrant consideration. When giving examples of experience, list the best two or three, if applicable. The trial and/or hearing experience*

*to be considered may be outside the five-year period of recent experience. Applicants also should note that experience will be assessed recognizing that in some areas of the province certain matters are more prevalent than others.*

11. Applicants are asked to confirm their knowledge and experience with the tasks listed in paragraph 9, in each of (a) Advocacy Skills, (b) Principles and Issues and (c) Legislation by placing a check mark (✓) next to each task to demonstrate their health law advocacy experience.

(a) **Advocacy Skills**

- Identify the appropriate procedure or venue, and the necessary parties to resolve the client's problem
- Identify the appropriate causes of action, claim, or remedy in any given case
- Identify the full range of defences or remedies that are available and appropriate in any given case
- Draft appropriate documentation to advance or defend a claim or matter
- Apply the law relevant to limitation periods, minors, persons of unsound mind and the discoverability principle
- Analyze, research and develop an appropriate theory to advance or defend a claim or matter
- Marshall the necessary factual evidence to advance or defend a claim or matter, including witnesses, documents, including those in the possession of a third party, and demonstrative evidence
- Marshall the necessary opinion evidence of experts to advance or defend a claim or matter
- Conduct discovery, examination and/or cross-examination in advance of the hearing or trial on affidavits, and of witnesses including experts on health care issues
- Apply the *Rules of Civil Procedure*, the *Statutory Powers Procedures Act* and/or the rules of procedure applicable to the forum
- Draft and argue typical interlocutory matters and significant motions
- Prepare offers to settle and requests to admit
- Advise client with respect to the full range of alternative dispute resolution options
- Advocate effectively in negotiations, mediations, pre-trials and/or pre-hearings and settlement conferences
- Advocate effectively the client's position on motions, applications, trial (jury and/or non-jury), matters requiring written submissions and/or hearings and appeals

- ❑ Advise client with respect to the appropriate procedure to present matters of leave to appeal and judicial review
- ❑ Identify the appropriate procedures and the appropriate parties to bring a matter before a statutory body
- ❑ Effectively examine and cross-examine expert witnesses in regard to health care matters at a trial or hearing
- ❑ Identify the appropriate relief to be granted or refused in any given case and prepare the appropriate documents to obtain such relief
- ❑ Carry a contested matter forward to resolution before a tribunal and/or court
- ❑ Prepare or deliver submissions on behalf of a health profession and/or College before Health Professions Advisory Council
- ❑ Prepare or deliver submissions to Government on the impact of proposed health legislation

**(b) Principles and Issues**

- ❑ Duty of care
  - ❑ Fiduciary Duty
  - ❑ Informed Consent
  - ❑ Disclosure of adverse event
- ❑ Standard of care
- ❑ Negligence vs. error of judgment
- ❑ Direct and vicarious liability
- ❑ Misrepresentation or Fraudulent Concealment
- ❑ Privacy/Confidentiality
- ❑ Causation
- ❑ Proof of damages
- ❑ Disclosure of health records or clinical records
- ❑ By-Laws
- ❑ Limitation periods - Discoverability rule
- ❑ Incapacity and consent to treatment
- ❑ Substitute decision making

- Professional misconduct and/or breach of professional standards
- Incompetence or incapacity to practice a health profession
- Personal health information (e.g. access and correction of records)
- Conflict of interest while practicing a health profession
- Hospital privileges
- Health care products liability
- Other health law issues (please list)

(c) **Legislation**

Applicants will have advised and/or represented clients with respect to issues/matters arising from some or all, but not limited to, the following health care legislation and related regulations:

- Health Care Consent Act*
- Substitute Decisions Act*
- Mental Health Act*
- Regulated Health Professions Act, 1991*
- Health profession specific legislation (e.g., *Medicine Act, 1991; Nursing Act, 1991*)
- Coroner's Act*
- Public Hospitals Act*
- Personal Health Information Protection Act, 2004*
- Health Insurance Act*
- Canada Health Act*
- Long-term care legislation
- Other health legislation (please list)

12. Applicants must provide with their application 3 summaries of proceedings outlining their advocacy experience each no longer than 2 pages and include the following information to illustrate their Health Law Experience. Information must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Issues involved in matter
- Complexity of the matter
- Who applicant represented
- Type of proceeding (application, claim, motion, tribunal, etc.)
- Synopsis of how matter resolved
- Citation, if available (reported or unreported)
- Name of other lawyers involved or if other side is unrepresented
- Name of judge, mediator or arbitrator
- Name of court, tribunal or committee
- Date matter heard during main proceeding (trial, application, hearing, ADR conference, etc.)
- Length of time it took to resolve matter during main proceeding
- Appeal of decision, if any
- Role as counsel, lead or co-counsel

## **CATEGORY 2: HEALTH LAW: SOLICITOR'S WORK**

13. The applicant has undertaken solicitor's work, including organization of businesses, drafting, corporate governance and corporate transactions, where health care issues were the primary focus.

(a) Applicants must include with their application a summary (no more than 200 words) of their practice as it relates to health law in the area of solicitor's work, and include a brief description of at least 3 significant transactions, business organizations or contract negotiations that they have been involved in.

(b) The applicant has performed a minimum of 30 tasks in respect of the health law sector (being individuals and entities with a health care focus, or in a matter in respect of which health law considerations are of a primary or substantial importance). Applicants are asked to place a check mark (✓) next to the tasks they are selecting to demonstrate their health law – solicitor's work experience.

### **(i) Establishment/Organization of Health Related Business Structures**

- Health care professional incorporation or other business structure
- Cost-Sharing/Associate Agreements
- Family Health Networks/Teams/Groups
- Partnerships, unincorporated associations, corporations, joint ventures
- Alternative Payment Plans
- Government agencies, boards/transfer payment organizations
- Health care facilities, including: long-term care facilities, nursing homes, hospitals, community care access centres, independent health facilities, health care clinics, diagnostic facilities, rehabilitation companies, organizations involved in the provision of health or health-related services, pharmaceutical companies (collectively, "Health Care Facilities")
- Local Health Integration Networks
- Other

### **(ii) Business Reorganizations**

Act on behalf of client with respect to:

- Purchase & sale of Health Care Facilities (shares and asset transactions)
- Amalgamation of Health Care Facilities
- Implementation of restructuring initiatives (e.g., LHINs, HSRC & Ministerial Directions, Devolution of Government Services)
- Transfers of services between Health Care Facilities
- Structuring strategic alliances between Health Care Facilities
- Structuring joint venture arrangements
- Establishing health care buying groups
- Winding up/dissolution of Health Care Facilities
- Structuring of public/private/partnerships
- Oversight of health regulatory issues in commercial financings
- Other

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**(iii) Corporate Governance**

- Provide advice regarding directors & officers' liability
- Provide general advice to Board of Directors
- Draft Medical/Administrative By-Laws
- Draft corporate materials (e.g., resolutions, board policies, committee mandates/terms of reference, organizational policies)
- Develop Board orientation/continuing education sessions and materials
- Organize and/or advise on annual general meetings
- Organize and/or advise on meetings of members and directors
- Provide advice regarding conflict of interest
- Other

**(iv) Negotiating and Drafting Contracts**

- Asset/share purchase agreements & related documentation
- Strategic alliance agreements
- Memoranda of understanding with government
- Memoranda of understanding between Health Care Facilities
- Funding agreements on behalf of health care providers and institutions or funding bodies
- Incorporation documents, including articles of incorporation/letters patent
- Research & clinical trial agreements
- Services agreements
- Manufacturing and distribution/supply agreements (e.g., medical devices & drugs, medical equipment)
- Outsourcing agreements
- Consulting and management agreements
- Agreements with Health Care Facilities and health professionals
- Development and implementation of procurement processes for goods and services in the health care sector (RFPs, RFQs)
- Agreements regarding health information management and/or technology systems
- Other

**(v) Non-Share Capital Corporations**

- Establish non-share capital corporations (e.g., application for letters patent, drafting objects and special provisions, supplementary letters patent)
- Advise regarding non-share capital corporations
- Prepare by-laws and by-law amendments
- Other

**(vi) Establishment of Charities and Foundations**

- Apply for the registration of charities
- Advise regarding issues related to charities (e.g., revenue generation) and the implications of charitable status
- Establish charitable foundation(s) for Health Care Facilities
- Other

**(vii) Policies and Procedures, Guidelines and Other Tools**

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- Develop policies, procedures, guidelines or other tools for Health Care Facilities or health professionals
- Review policies, procedures, guidelines or other tools for compliance with health care legislation/standards
- Develop and implement risk management strategies
- Other

**CATEGORY 3: HEALTH LAW: OPINIONS AND ADVICE**

14. The Applicant has prepared and/or provided a minimum of 200 substantial oral or written legal opinions or memoranda of law and/or spent a minimum of 1500 hours preparing, researching and providing advice in respect of health care litigation, transactions or health sector/industry management regarding the application, interpretation of, or compliance with health law.
- (a) Applicants must also include with their application, 5 summaries of substantive opinions and/or memoranda of law rendered to illustrate their experience in the area of health law opinions and advice. To the extent that opinions are highly confidential or proprietary in nature, the opinions should not be disclosed.
  - (b) Applicants seeking to qualify under this category will have a broad and varied experience in providing advice and opinions in the area of health law. To demonstrate this experience applicants are asked to identify with a checkmark (✓) next to the areas in which they have rendered advice and/or opinions, in some or all, but not limited to, the following matters:

**Opinions and Advice**

**Regulation, approvals, and duties of health care facilities/organizations, including:**

- Hospitals
- Psychiatric facilities
- Long-term care facilities
- Laboratories
- Pharmacies
- Independent health facilities
- Other \_\_\_\_\_

**Regulation and duties of health care providers, including:**

- Professionals governed by the Regulated Health Professions Act, 2001
- Social workers and social service workers
- Providers of alternative therapies
- Professional corporations
- Other \_\_\_\_\_

**Rights and obligations in relation to appointments and privileges of health care professionals in hospitals**

**Regulation and delivery of community health services, including:**

- Community services
- Homes for Special Care
- Supportive housing
- Community mental health
- Other \_\_\_\_\_

**Regulation and delivery of emergency health services, including:**

- Delivery of ambulance services
- Certification of paramedics and others involved in the delivery of emergency health services
- Other \_\_\_\_\_

**Advice to regulatory/oversight bodies charged with regulation/oversight of persons and activities in the health care sector (e.g., Ministry of Health and Long-Term Care, Health Canada, LHINs, medical officers of health, privacy commissioners, health profession colleges)**

**Consent, capacity, and substitute decision-making (e.g., in relation to treatment, admissions, finances, information)**

**Mental health issues**

**Privacy and confidentiality of health information, including:**

- Collection, use and disclosure of health information
- Access to and correction of records of health information
- Practices and procedures to protect records of health information
- Addressing complaints and reviews concerning compliance with privacy requirements
- Other \_\_\_\_\_

**Health records management**

- Records retention requirements
- Obligations regarding contents of records
- Other \_\_\_\_\_

**Issues arising from the use of information technology in health care delivery**

**Issues related to medical devices and technologies, including:**

- Sale of devices and technologies
- Marketing of devices and technologies
- Use of devices and technologies
- Intellectual property protection for devices and technologies
- Other \_\_\_\_\_

**Issues related to drugs, including:**

- Sale of drugs

- Marketing of drugs
- Pricing of drugs
- Listings/formularies of drugs in relation to provincial benefits
- Interchangeability designations for drugs
- Processes for access to unapproved drugs
- Intellectual property protection for drugs
- Alternative therapies and natural health products
- Other \_\_\_\_\_

**Issues related to organ and tissue donation**

**Issues related to the use blood and blood products**

**Establishment, enforcement and compliance with public health protection and promotion requirements, including:**

- Reporting requirements
- Inspections
- Emergency preparedness
- Immunization
- Infection control
- Tobacco regulation
- Quarantine and other detention
- Other \_\_\_\_\_

**Funding and payment issues in relation of health care services and goods**

- Eligibility of persons seeking services and goods for funding
- Eligibility of health care providers for funding
- Eligibility of health care services or goods for funding
- Charging of fees, including restrictions on the charging of fees
- Fulfilment of accountability requirements
- Other \_\_\_\_\_

**Liability in relation to activities of:**

- Health care providers
- Health care institutions
- Use of drugs, devices, technology and other health products
- Other \_\_\_\_\_

**Quality Assurance and Risk/Error Management, including:**

- Insurance issues
- Patient safety
- Error/incident reporting obligations
- Protection of quality of care information
- Other \_\_\_\_\_

- Compliance with waste management and environmental requirements imposed on health care organizations and providers**
- Constitutional law matters related to the health care sector (e.g., rights and obligations arising from the *Charter*, division of powers issues)**
- Advice concerning criminal and regulatory offences in the health care sector**
- Assisted human reproduction**
- Genetics**
- Medical/ethical/legal issues, including:**
  - End-of-life issues
  - Resource allocation issues
  - Other \_\_\_\_\_
- Issues concerning health care delivery through the private sector**
- Employment and labour law issues specific to health care providers, including:**
  - Non-competition/non-solicitation by health care providers
  - Obligations concerning the delivery of essential health services
  - Mandatory reporting requirements concerning actions of health care providers
  - Health care providers as independent contractors
  - Other \_\_\_\_\_
- Health research, including:**
  - Obligations of research ethics boards
  - Requirements concerning the conduct of clinical trials
  - Research funding arrangements
  - Regulatory approvals in relation to research
  - Intellectual property issues in relation to research
  - Other \_\_\_\_\_
- Planning in relation to health care system restructuring**
- Other \_\_\_\_\_**

**Legislation**

Applicants will have advised clients with respect to issues/matters arising from some or all, but not limited to, the following health legislation and related regulations:

- Ambulance Act*
- Ambulance Services Collective Bargaining Act, 2001*
- Assisted Human Reproduction Act*

- Canada Health Act*
- Cancer Act*
- Commitment to the Future of Medicare Act, 2004*
- Community Care Access Corporations Act, 2001*
- Community Psychiatric Hospitals Act*
- Coroners Act*
- Drug and Pharmacies Regulation Act*
- Drug Interchangeability and Dispensing Fee Act*
- Drugless Practitioners Act*
- Emergency Management Act*
- Food and Drug Act*
- Healing Arts Radiation Protection Act*
- Health Care Consent Act*
- Health Facilities Special Orders Act*
- Health Insurance Act*
- Health Protection and Promotion Act*
- Homes for Special Care Act*
- Homes for the Aged and Rest Homes Act*
- Hospitals Labour Disputes Arbitration Act*
- Immunization of School Pupils Act*
- Independent Health Facilities Act*
- Laboratory and Specimen Collection Centre Licensing Act*
- Long-Term Care Act*
- Mandatory Gunshot Wounds Reporting Act*
- Mental Health Act*
- Nursing Homes Act*
- Ontario Drug Benefits Act*
- Personal Health Information Protection Act, 2004*
- Private Hospitals Act*
- Public Hospitals Act*
- Quality of Care Information Protection Act, 2004*
- Quarantine Act*
- Regulated Health Professions Act, 1991, and related health profession-specific statutes*
- Smoke Free Ontario Act*
- Social Work and Social Service Work Act, 1998*
- Substitute Decisions Act*
- Trillium Gift of Life Network Act, 2001*
- Other \_\_\_\_\_

**CATEGORY 4: HEALTH LAW: SUBSTANTIAL CONTRIBUTION, DEVELOPMENT OF HEALTH LAW**

15. The applicant has made a substantial contribution to the development of health law through a combination of all or some of the following activities. Applicants are asked to place a checkmark (✓) next to activities engaged in and to include with their application, 3 summaries of their areas of substantial contribution, development of health law, to illustrate why they are applying under this Category.

- ❑ Drafting health legislation/regulations
- ❑ Teaching health law at an accredited post-secondary institution
- ❑ Contributing to health law literature through publications, including commentary, research papers, and treatises
- ❑ Receiving graduate degrees or other academic qualifications in the area of health law
- ❑ Making presentations at conferences and continuing education programs in the area of health law to lawyers and professionals in the health sector
- ❑ Contributing to the public's understanding of health law matters through public education, including oral presentations and the development of written materials
- ❑ Participating as an active member on health sector boards or tribunals, or on the executive of any organization related to health law
- ❑ Participating as an active member on research ethics boards
- ❑ Participating as an active member of a government body appointed to address health law issues

### **Professional Development**

16. For each of the 5 years of recent experience, applicants must attest to the completion of annual professional development requirements. For 2004 and all subsequent years, the requirements are:
- (a) Not less than 50 hours of self-study; and
  - (b) Not less than 18 hours of relevant professional development, at least 6 hours of which consist of participation in CLE programs that have either been accredited or are capable of being accredited by the Committee. The balance, if any, of the 18 hour professional development requirement may be met through alternative methods such as, but not limited to:
    - Teaching or being guest lecturer on a course in the specialty area;
    - Writing and editing of published books or articles relating to the specialty area;
    - Graduate or post-graduate studies in the specialty area;
    - Involvement in the development and/or presentation of professional development programs related to the specialty area; or
    - Involvement in the development of policy related to the specialty area.

### **References**

17. Applicants must submit 4 references from legal practitioners eligible to practise law in Ontario who have direct knowledge of the applicant's work in Health Law in the 5 years of the applicant's recent experience and can attest to the applicant's competent performance of the tasks outlined under Health Law Experience above.
18. Applicants should not include as reference: judges, partners, associates, co-workers, employers, counsel to their firm, employees, relatives, members of the Health Law Specialty Committee or the Certified Specialist Board, benchers or employees of the Law Society. However, if applicants because of their particular career paths are unable to provide 4 references from legal practitioners other than those excluded in this paragraph, references may be obtained from employers and co-workers, provided that reasons are provided for same.
19. The Statements of Reference must be submitted with the application to the Law Society in confidential envelopes, which have been sealed, signed and dated by the referees. Envelopes, which have been opened or appear to have been tampered with, will not be accepted.

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### **Assessment of Application by Health Law Specialty Committee**

20. The Committee will consider the totality of an applicant's practice in Health Law, the applicant's Professional Development Report and references.
21. Applicants may be required to provide additional information to the Committee to facilitate the assessment process.

## Part IV

### COMPARATIVE ANALYSIS OF CERTIFIED SPECIALISTS

Legal Specialty	Average% of Practice in Specialty in Last 5 years	Subspecialty	Routes for Specialization: What Applicants are Required to Demonstrate (Comments are in bold)
Bankruptcy and Insolvency	50% focus, but if slightly lower, principle of “substantial involvement” is applied	No	<p>Participate in at least 50 different tasks in three different categories:</p> <p>(1) bankruptcy and other forms of liquidation;</p> <p>(2) proposals and other forms of reorganization;</p> <p>(3) creditors rights and remedies</p> <p><b>**while not mandatory, it ordinarily will be expected that the applicant will have demonstrated a <u>broad experience</u> by having performed a reasonable number of functions listed under each category.</b></p>
Citizenship and Immigration	50% (if applying for one sub-specialty) and 75% if applying for both	Yes “Immigration” “Refugee Protection”, and “Immigration/Refugee Protection”	<p>E.g.: Refugee Protection: Must complete all tasks in category 1 (applications for protected status), and all tasks in 3 of 5 other categories:</p> <ol style="list-style-type: none"> <li>1. applications for judicial review;</li> <li>2. applications to PRRA or PDRCC;</li> <li>3. detention and release;</li> <li>4. extraordinary remedies; and</li> <li>5. miscellaneous applications</li> </ol>
Civil Litigation	50%	No	<p><i>*There is a minimum expectation that an applicant will have had some trial and/or hearing experience. The number of trials and/or hearings is not determinative and due regard is given to the complexity of the issues before the court and/or tribunal. If specific trial and/or hearing experience is absent, there may be special circumstances that warrant consideration. When giving examples of experience, list the best two or three,</i></p>

			<p><i>if applicable. The trial and/or hearing experience to be considered may be outside the five-year period of recent experience. Applicants also should note that experience will be assessed recognizing that in some areas of the province certain matters are more prevalent than others.”</i></p> <p><b>**There is no requirement for a specific number of hearing/trial trial days.</b></p>
Construction	33%	No	<p>At least 50 tasks in at least 6 of the 13 categories:  (1) development; (2) financing; (3) tenders and proposals; (4) design/professional services; (5) procurement and construction; (6) insurance; (7) labour; (8) violations of regulatory requirements; (9) post construction; (10) security for payment and performance; (11) trust claims; (12) disputes; (13) liens</p> <p><b>** There is a mix of litigation/solicitors work in a variety of these areas, but only the last 3 items are mostly litigation focused.</b></p> <p><u>However, all applicants are just required to complete 6 of 13 categories, and all successful applicants receive the same designation: specialist in “Construction Law”.</u></p>
Corporate and Commercial	40%	No	<p>At least 115 tasks in 8 out of 15 categories:</p> <ol style="list-style-type: none"> <li>(1) creation of business structures</li> <li>(2) corporate and business reorganizations</li> <li>(3) mergers and acquisitions</li> <li>(4) corporate governance</li> <li>(5) securities</li> <li>(6) debt financing</li> <li>(7) creditor and debtor rights and remedies</li> <li>(8) leasing</li> <li>(9) franchising; (10) franchising;</li> <li>(11) representation before administrative tribunals; (12)</li> </ol>

			resolution of disputes; (13) information technology; (14) termination of corporate existence; (15) non-share capital corporations;
Criminal Law	50%	No	<p><b>Three Routes:</b></p> <p>(1) practice is primarily trial advocacy – must complete tasks in part I;</p> <p>(2) practice is primarily appellate advocacy – must complete tasks in part II;</p> <p>(3) practice combines both trial and appellate advocacy – must complete combinations of tasks from part I and Part II.</p> <p><b>**committee will consider the totality of the applicant’s practice</b></p> <p><b>**not required to complete all of part I and part II if you have a “mixed” practice</b></p>
Environmental Law	50%	No	<p>Must complete tasks in 2 out of 4 categories:</p> <p>(1) environmental litigation – at least 150 “days of proceedings” – any type whether administrative/civil, etc;</p> <p>(2) environmental transactions – at least 20 significant transactions ;</p> <p>(3) opinions and advice – at least 200 oral or written;</p> <p>(4) substantial contribution/development</p> <p><b>** as long as you have two out of the four categories covered off, you can call yourself a Certified Specialist in Environmental Law – there is no distinction between the litigators/advocates and solicitors.</b></p>
Estates and Trusts	30%	No	<p>Must perform tasks in 2 out of 3 categories:</p> <p>(1) Estate and Trust Planning;</p> <p>(2) Estate and Trust Administration;</p> <p>(3) Estate and Trust Litigation.</p> <p><b><u>OR</u> complete <u>category 4 only:</u></b> Applicants may not meet the</p>

			<p>requirements of the 3 categories above, but “are nevertheless recognized leaders of the profession who have demonstrated their estates and trust experience” through <u>at least two</u> of the following:</p> <ul style="list-style-type: none"> <li>(a) related practice areas such as personal tax, corporate tax, charities;</li> <li>(b) teaching estates and trusts;</li> <li>(c) writing</li> <li>(d) trust industry</li> <li>(e) insurance industry</li> <li>(f) government, boards or tribunals</li> <li>(g) development and/or presentation of professional development programs</li> <li>(h) research/government or private</li> </ul>
Family	50%	No	<p>Must have had carriage of at least 15 complex matters, some of which “were resolved after a court proceeding was commenced”.</p> <p>Must have experience in using alternative dispute resolution.</p> <p>Must have advised clients in each of the five categories:</p> <ul style="list-style-type: none"> <li>(1) custody/access/wardship (10/13 tasks);</li> <li>(2) child support (10/13 tasks);</li> <li>(3) spousal support (10/13 tasks);</li> <li>(4) property (17/20 tasks);</li> <li>(5) cohabitation/marriage/divorce (8/10 tasks).</li> </ul>
Intellectual Property	50% for one area 90% for qualification in 2 or 3 areas	Yes “Patent” “Trademark” “Copyright” or combinations of the above 3	<p><b><u>E.g. Patent Law:</u></b></p> <p>Route 1: Perform all tasks in category 1</p> <p>Route 2: Perform tasks in any 2 of categories 2, 3, 4</p> <p>Route 3: "Applicants who do not meet the requirements in routes 1, 2 or 3, may be considered for certification on a case by case basis. Applicants applying under this route must indicate which of the task requirements in any of the categories they have completed and provide a brief description of the tasks</p>

			so as to demonstrate expertise in the field of patent law...” ** <u>There are different requirements for the subspecialties of Trademark and Copyright</u>
Labour Law	50%	No	<b><u>Route 1:</u></b> complete tasks in 3 out of 4 categories in Part I and tasks in 3 out of 10 in Part II <b><u>Route 2:</u></b> complete all 4 categories in Part I and at least 2 categories in Part II; <b><u>Part 1 categories are:</u></b> (1) advice, labour relations and collective bargaining – <u>at least 30 matters</u> ; (2) legal counsel, bargaining, unfair labour practices, construction industry – <u>at least 15 matters</u> ; (3) collective bargaining – acting as negotiator in <u>5 sets</u> or advising the negotiator in <u>15 sets</u> ; (4) arbitrations – <u>25 matters</u> <b><u>Part II categories are:</u></b> (1) occupational health and safety – 10 matters; (2) employment standards – 25 matters; (3) pay equity – 5 matters or 1 hearing; (4) human rights – 10 matters or 1 hearing; (5) labour litigation in the courts – at least 3 different proceedings; (6) wrongful dismissal in the courts – at least 15 claims; (7) workplace safety & insurance; (8) employee benefits; (9) professional discipline proceedings; (10) other labour/employment related proceedings.
Real Estate Law	50%	No	Must complete all tasks in the “core requirements” Must complete 50 tasks in 3 out of 6 categories Must complete at least 42 tasks in the “advanced requirements”
Workplace Safety and Insurance Law	33%	No	Must complete 104 of 172 matters in Part I (related to employees’ entitlements), plus 104 of 172 matters in part II (related to employers’ obligations)